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8 APR 1981

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MEMORANDUM FOR: Director of Personnel Policy, Planning, and Management

THROUGH: Deputy Director for Science and Technology
Chief, Contract Personnel Division, OPPPM

FROM: Director, Foreign Broadcast Information Service

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SUBJECT: Request to Hire Agency Annuitant -

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1. This memorandum contains a request for your approval in paragraph seven.

2. FBIS is enhancing its London Bureau's Soviet media processing capability to include the direct monitoring and processing of Soviet media broadcasts . It is expected that this FBIS monitoring project will become operational in late spring of this year. The number of foreign national broadcast monitors employed by the London Bureau who have the requisite language and translation experience to perform the Soviet media monitoring task is presently limited to and one other FBIS monitor. will be 65 years of age on 24 April 1981 and will be mandatorily retired under the U.S. London mission's retirement policy effective 30 April 1981.

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3. State Department Regulation 3 FAM 974.2-3, Attachment A, provides for the heads of overseas missions to separate foreign service national employees for age when employees reach the mandatory separation age established by the mission. The Department of State has obtained a ruling from its legal counsel and the Office of Personnel Management that the Age Discrimination in Employment Act (ADEA) does not deprive the Department and its missions abroad of the authority to mandatorily retire foreign national employees on the basis of age, Attachment B.

4. FBIS requested an opinion from OGC concerning the State policy of mandatory retirement for age. OGC agreed that foreign service national employees are excluded from the protection of the ADEA. Thus OGC found no legal objection to FBIS continuing to adhere to State's separation for age policy as established at each local mission. (FBIS memorandum dated 31 March 1981 and OGC 80-03615, as Attachments C and D.)

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SUBJECT: Request to Hire Agency Annuitant [REDACTED]

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5. The FBIS/London Bureau Chief approached the U.S. Embassy London to obtain an exception to the mission mandatory retirement policy to permit [REDACTED] to remain employed by FBIS on an appointed basis beyond her 65th birthday. This request was disapproved by the Embassy. The Administrative Counselor explained that the mission did not wish to establish a precedent which could later be used by the British labor courts in any mandatory retirement exception cases not approved and subsequently disputed. The Administrative Counselor did agree, however, to permit FBIS to reemploy [REDACTED] on a contract basis following her mandatory retirement on 30 April.

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6. FBIS considers [REDACTED] services essential to the upcoming implementation of the enhanced Soviet media coverage program. [REDACTED] is an experienced voice monitor and has served with the FBIS London Bureau since 1975, during which time she has continually made an invaluable contribution to the bureau's mission, in particular with regard to television monitoring. Her native fluency in Russian, combined with her extensive experience in monitoring at several FBIS bureaus, has made her an acknowledged expert in this area.

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7. The criteria contained in [REDACTED] concerning the employment of annuitants has been reviewed but is not applicable due to the unique skills required to perform this function. FBIS therefore requests permission to reemploy [REDACTED] as a contract employee annuitant.

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Attachments:
As Stated

CONCUR:

Deputy Director for Science and Technology_____
Date_____
Chief, Contract Personnel Division, OPPPM_____
Date

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RECEIVED 10/19/77

SUBJECT: Request to Hire Agency Annuitant -

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APPROVED:

Director of Personnel Policy, Planning, and
Management

Date

RECEIVED 10/19/77

DDS&T/FBIS-Pers/

(3 April 1981)

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974.2-3 For Age

Separation for age is one category of separation by disqualification and occurs when an employee reaches the mandatory separation age established by the mission for that category of employment. Such age limit normally is established in accordance with local law or *custom. If* at time of separation an employee under CSR meets eligibility requirements for voluntary retirement, the employee may elect such retirement is lieu of separation for age (see section 675 and AID Handbook 30, Separations and Disciplinary Actions, retirement under CSR). In cases of separation for age, as with other reasons for separation, adequate advance notice should be given to the employee. *(See also Exhibit 974.2-3 and section 974.3b.)*

974.2-4 By Reduction in Force

Separation by reduction in force (RIF) occurs when an employee is separated involuntarily because of lack of funds, reorganization, decrease of work, or similar reason. The heads of overseas establishments should jointly establish rules and procedures governing such separation. Consideration is given to the local labor laws and practices and the employee's performance, type of appointment, and length of service. A point-score system may be developed to provide an equitable retention register after the overseas establishment has determined competitive areas relating to occupational skills and qualifications.

974.2-5 For Abandonment of Position

Separation for abandonment of position occurs when an employee quits post of duty or fails to return to duty after end of authorized leave. The overseas establishments should jointly establish a period of time to permit receipt of an explanation from the employee of such absence before taking separation action.

974.2-6 For Disappearance

Separation for disappearance occurs when an employee remains missing or has disappeared for 1 year, and it has been impossible during that time to obtain an official document as to death. The advice of the appropriate headquarters office should be sought regarding appropriate statutes of limitations, as to disposition of the employee's salary, lump-sum leave payment, or contributions to the Civil Service Retirement Fund.

974.2-7 For Military Service

Separation for military service occurs when an employee is called to active duty in the armed forces of a country other than the United States or when given leave of absence because of entering or recall to the U.S. Armed Forces. The heads of overseas establishments should jointly prescribe rules governing separation of employees entering the armed forces of another country. Good personnel practice would be to place the employee in an LWOP status, if feasible, rather than effect a

separation action. *FSN* employees entering or recalled to U.S. military service are entitled to the benefits as provided in sections 741.4 and 742 for U.S. citizen employees.

974.2-8 For Disability

Separation for disability occurs when an employee is physically or mentally incapable of performing satisfactorily the duties required of employee's position. This type of separation normally applies to employees who are not covered under the provisions of the Civil Service Retirement and Disability System. However, it may apply to an employee who is covered under the System, but who is ineligible for disability retirement under it.

974.2-9 By Death

In cases of separation by death, Form DS-1032, Notification of Personnel Action, should reflect the employee's separation from the Service as of the close of business on the date of death.

974.3 Preparation of Separation Action

In all cases of separation, a Form DS-1032, Notification of Personnel Action, is prepared and distributed in accordance with Exhibit 924.2c and the following supplemental instructions:

a. Under the "Remarks" section on each separation action, enter:

(1) Date on which any advance notice of separation was given the employee.

(2) Amount of leave for which any lump-sum payment is authorized.



DEPARTMENT OF STATE

Washington, D.C. 20520

*foxes Retmt*MEMORANDUM

April 27, 1978

TO: PER/ES/LP - Mr. Alan Weinstein

FROM: L/M - Paul M. Coran *PC*

SUBJECT: Continued viability of 3 FAM 974.2-3 In
View of the Age Discrimination in Employment
Act Amendments of 1978

Mr. Malmberg has referred to me for response your March 28, 1978, memorandum, which essentially inquires whether the ADEA amendments invalidate 3 FAM 974.2-3 to the extent that the regulation permits missions to prescribe mandatory age retirement for Foreign Service local personnel.

It is my view that the ADEA, as amended, does not deprive the Department and its missions abroad of the authority to mandatorily retire local employees on the basis of age; although the Act does proscribe such action with regard to Department civil service personnel. In this regard, I specifically rely upon section 15(a) of the ADEA, as amended by Public Law 95-256 (effective April 6, 1978), which excepts from the scope of that statute: "... personnel actions with regard to aliens employed outside the limits of the United States." Accordingly, it is my opinion that the ADEA requires no amendment to 3 FAM 974.2-3.

L/M;pmcoran:ejc

December 3, 1976

Mr. John P. Bowler
Supervisory Legislative and
Technical Assistant
Legislative and Policy Division
Bureau of Retirement, Insurance, and
Occupational Health
U. S. Civil Service Commission
Washington, D. C. 20415

Dear Mr. Bowler:

The American Embassy in Dublin has sent us a copy of your letter to them of November 3 (your reference RL:RET). This letter is evidently in reply to their telegram 1662 of 8/19/76 to the Department of State, of which the Commission received an information copy. The post had queried the Department concerning reducing the retirement age of local employees to 65 in lieu of 70 in view of their coverage under CSR. Your reply to the post states that "only amendatory legislation could lower the mandatory separation age to 65."

Our reply to Dublin (State telegram 214913 of 8/30/76, attachment 1) explained that under CSR regulations, any age below 70 cannot be mandatory retirement. However, in accordance with Department of State regulations contained in volume 3 of the Foreign Affairs Manual, sections 974.1, 974.2-3, and 974.3b (attachment 2), Foreign Service posts may follow prevailing local practice and establish an age below 70 for all or certain categories of employees for ~~mandatory separation for age, provided the employee is eligible to receive an immediate annuity under CSR regulations.~~ This policy was agreed to by the Civil Service Retirement Commission in 1966. The clearance of Mr. R. M. Cody of the CSR Commission on a draft memorandum to Rome dated 8/24/66 (attachment 3) attests the Commission's concurrence with this policy. Since

that time, many posts participating in CSR have implemented a separation-for-age policy below the age of 70 in order to follow prevailing local practice. Department of State airgram CA-6648 of 3/19/68 (attachment 4) further explains this policy.

At the present time we are encouraging and in some cases requiring posts to adopt the host government social security scheme for all employees or, at least, future hires. However, for a variety of reasons, it will be some years before this policy can be implemented in all foreign countries. We consider continuation of our separation-for-age policy highly desirable in effectively managing our Foreign Service local-employee programs abroad.

Sincerely yours,



Alan Weinstein, Chief
Local Personnel Division

Attachments:

1. State's telegram 214913
dtd 8/30/76
2. Sections 3 FAM 974.1,
974.2-3; and 974.3b
3. Draft memo to Rome
dtd 8/24/66
4. State's airgram CA-6648
dtd 3/19/68



PER/ES/LP:AFMcCLAIN:jpb
12/3/76, Ext. 51004



UNITED STATES CIVIL SERVICE COMMISSION
BUREAU OF RETIREMENT, INSURANCE, AND OCCUPATIONAL HEALTH
WASHINGTON, D.C. 20415

IN REPLY PLEASE REFER TO

RD:RET:FD

YOUR REFERENCE

APR 5 1977

Mr. Alan Weinstein
Local Personnel Division
Department of State
Washington, D. C. 20520

Dear Mr. Weinstein:

This is in reply to your letter of December 3, 1976, concerning the State Department practice of "mandatory separation-for-age" below age 70 for local employees.

Your office is apparently concerned about the phrase in our November 3, 1976 letter which stated that "only amendatory legislation could lower the separation age to 65." This phrase referred to only that section of the Civil Service Retirement law governing mandatory retirement due to age (5 U.S.C. 8335(a)), which is considered an involuntary separation from the service.

If your local employees overseas are separated for voluntary retirement under a different section of the retirement law (such as at least 5 years of creditable service and age 62 or older), section 8335(a) has no applicability to them. Neither does it have applicability to a separation for disability retirement or to an involuntary separation which would otherwise qualify the employee for retirement benefits under our law (such as reduction in force, abolishment of position, or inefficiency not due to delinquency or misconduct).

Since you state in your letter that the local employees are not mandatorily separated under age 70 unless they are eligible for an immediate annuity under a provision of the law other than 5 U.S.C. 8335(a), we find no fault with the policy you currently follow.

Sincerely yours,

John P. Bowler
John P. Bowler
Supervisory Legislative
and Technical Assistant
Legislative and Policy Division

THE MERIT SYSTEM—A GOOD INVESTMENT IN GOOD GOVERNMENT


31 March 1980

MEMORANDUM FOR: General Counsel
SUBJECT: Separation for Age-Foreign National
REFERENCE: OGC 78-1441, 9 March 1978

1. The Department of State establishes a separation for age policy below the age of 70 based on prevailing local practices. and if the Foreign National Employee so separated has a CSR eligibility he may receive an immediate annuity.

2. In reference, FBIS was encouraged to adopt State Department mission retirement policy for its local hires whereas third country FBIS employees were authorized to continue under CSR.

3. Since all FBIS FN employees are appointed employees of the Agency, it is requested that a determination be made whether FBIS can follow the Department's Separation for Age Policy. Documents received from the Department of State are attached for your review.


Chief, Admin Staff, FBIS

Attachments:
As stated

DDS&T/  (31 Mar 80)

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